

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of Powers Construction Co.,
Inc., License No. BC1939

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for a prehearing conference before Administrative Law Judge George A. Beck commencing at 2:30 p.m. on December 22, 2004, at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401-2138.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce ("Department"). Respondent did not appear at the prehearing conference. The record closed on December 22, 2004, upon Respondent's default.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Murphy, Deputy Commissioner, Minnesota Dept. of Commerce, 85 Seventh Place E., Suite 500, St. Paul, MN 55101 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

The issue in this case is whether or not Respondent is financially irresponsible and failed to respond to the Department's requests contrary to Minnesota law.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On November 18, 2004 the Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges was served on the Respondent at 938 Stratford Road, Mendota Heights, MN 55118, Attn: Robert Powers, Qualifying Person.

2. The Notice of and Order for Hearing and Notice of Prehearing Conference served on Respondent contained the following statement:

Respondent's failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department of Commerce's allegations contained in this Notice and Order may be accepted as true, and that its proposed action may be upheld.

3. Respondent did not appear at the December 22, 2004 prehearing conference, made no prehearing request for a continuance, nor did he file a Notice of Appearance.

4. The allegations of the Notice of and Order for Hearing and Notice of Prehearing conference are deemed proved and incorporated into these Findings by reference.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Commissioner of Commerce and the Administrative Law Judge have subject matter jurisdiction herein pursuant to Minn. Stat. § § 45.027, 326.91, and 14.50.

2. Respondent was given timely and proper notice of the hearing in this matter.

3. The Department has complied with all relevant substantive and procedural requirements of statute and rule.

4. Under Minn. R. 1400.6000, Respondent is in default as a result of his failure to appear at the scheduled prehearing conference.

5. Under Minn. R. 1400.6000, the allegations and the issues set out in the Notice of and Order for Hearing and Notice of Prehearing Conference may be taken as true or deemed proved when a party defaults.

6. Based upon the facts set out in the Notice of and Order for Hearing and Notice of Prehearing conference, Respondent has violated Minn. Stat. § § 45.027 and 326.91.

7. An order is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner take disciplinary action against the residential building contractors license of Powers Construction Co., Inc.

Dated this 28th day of December 2004.

/s/ George A. Beck

GEORGE A. BECK

Administrative Law Judge

Reported: Default.

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.